

Case Type: 14 Other Civil

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF BLUE EARTH

FIFTH JUDICIAL DISTRICT

Firepond, Inc.,

Court File No. 07-cv-08-3170

Plaintiff,

vs.

SUMMONS

Morrison & Foerster LLP,

Defendant.

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANT:


You are hereby summoned and required to serve upon the Plaintiff's attorneys, at the address indicated below, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

You are advised that under Rule 114 of the General Rules of Practice for the District Courts, all civil cases are subject to Alternative Dispute Resolution (ADR) processes. Your attention is directed to the ADR options available under that rule.

ACKNOWLEDGEMENT: The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the party against whom the allegations in this pleading are asserted.

EXHIBIT A

Dated: September 22, 2008


William S. Partridge
Attorney I.D. #84256
Attorney for Plaintiff
FARRISH JOHNSON LAW OFFICE
1907 Excel Drive
P.O. Box 550
Mankato, MN 56002-0550
Telephone: 507.387.3002
Fax: 507.625.4394

and

Richard H. Kakeldey
Attorney I.D. 53247
Attorney for Plaintiff
KAKELDEY & ASSOCIATES, P.A.
1400 Madison Ave., Suite 628
P.O. Box 4129
Mankato, MN 56002-4129
Telephone: 507.625.1030
Fax: 507.625.1550

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COMPLAINT

Morrison & Foerster LLP,

Defendant.

Comes now the plaintiff, Firepond, Inc., and for its cause of action against defendant, Morrison & Foerster LLP, states and alleges:

JURISDICTION AND VENUE

1. Jurisdiction is conferred upon this court by Minn. Stat. § 543.19, as defendant is a foreign corporation that has transacted business within this state.
2. Venue is proper in Blue Earth County, Minnesota, as this is the county in which the cause of action or some part thereof arose.

PARTIES

3. Plaintiff, Firepond, Inc. (Firepond), is a Delaware corporation with its principal place of business located at 11 Civic Center Plaza, Suite 310, Mankato, Blue Earth County, Minnesota.

4. On information and belief, defendant, Morrison & Foerster LLP (Morrison), is a California corporation with its principal place of business located at 425 Market Street, Suite 3200, San Francisco, California.

FACTUAL ALLEGATIONS

5. Over the past several years Firepond has hired Morrison to provide legal services with respect to various matters including, but not limited to, helping Firepond obtain financing, register securities, a 2006 reverse merger resulting in the company's stock being publicly registered and traded, and various corporate matters.

6. Firepond does not have a written retainer agreement or written engagement agreement with Morrison.

7. An attorney client relationship exists between Firepond and Morrison.

8. Other than bills Firepond has received from Morrison, Firepond has not received from Morrison any written statement setting forth Morrison's basis for compensation, its hourly rates, statutory or flat fees, and other standard rates, fees and charges.

9. On various occasions Morrison's employees have come to Mankato, Blue Earth County, Minnesota to advise and represent Firepond.

10. Firepond has paid some of Morrison's bills, and has not paid all of Morrison's bills.

11. Morrison claims that Firepond owes it approximately \$670,000 in past due bills.

12. Firepond is not responsible for all of Morrison's bills because it never agreed to the basis for Morrison's compensation.

BREACH OF FIDUCIARY DUTY

13. Because an attorney client relationship exists between Firepond and Morrison, Morrison owes Firepond certain fiduciary duties including but not limited to representing Firepond with undivided loyalty, preserving Firepond's confidences, and to disclose to Firepond any material matter bearing upon the subject matter of the representation.

14. On information and belief, Morrison has breach its fiduciary duties to Firepond by:

- a. charging hourly rates for work which Firepond did not agree to pay;
- b. increasing the hourly rates for various timekeepers without notifying Firepond in advance and securing Firepond's agreement to pay the increased rates;
- c. charging excessive hours for the work Morrison performed for Firepond;
- d. billing Firepond for the same work performed by multiple timekeepers;
- e. billing Firepond in such a manner that it cannot determine what work was done or how much time was spent on each task by each timekeeper;
- f. charging fees in direct contravention of instructions of Firepond's chief executive officer; and
- g. charging Firepond for out-of-pocket expenses without providing appropriate documentation.

15. By breaching its fiduciary duties to Firepond, Morrison has forfeited its right to any compensation for the legal services performed.

BREACH OF IMPLIED CONTRACT
(Alternative Count)

16. An implied contract for the provision of legal services exists between Firepond and Morrison.

17. On information and belief, Morrison has breach the implied contract by:

- a. charging hourly rates for work which Firepond did not agree to pay;
- b. increasing the hourly rates for various timekeepers without notifying Firepond in advance and securing Firepond's agreement to pay the increased rates;
- c. charging excessive hours for the work Morrison performed for Firepond;
- d. billing Firepond for the same work performed by multiple timekeepers;
- e. billing Firepond in such a manner that it cannot determine what work was done or how much time was spent on each task by each timekeeper;
- f. charging fees in direct contravention of instructions of Firepond's chief executive officer; and
- g. charging Firepond for out-of-pocket expenses without providing appropriate documentation.

18. As a direct and proximate cause of Morrison's breach of implied contract Firepond has been damaged in an amount to be determined because it has paid, and may be required to pay, for legal services which it did not agree to pay.


19. Morrison's right to receive payment for legal services rendered to Firepond, if any, should be limited to the reasonable value of those services properly provided, and not the actual amount charged by Morrison to Firepond.

WHEREFORE, plaintiff seeks an order of this court, as follows:

1. Finding that Morrison has breached its fiduciary duties to Firepond, and that as a result, has forfeited its right to receive any compensation for legal services performed for Firepond.
2. In the alternative, finding that Morrison breached its implied contract for providing legal services to Firepond;
3. Finding that as a direct and proximate cause of Morrison's breach of its implied contract Firepond does not owe Morrison legal fees of approximately \$670,000.
4. Finding that Morrison's right to receive payments for legal services rendered, if any, is limited to the reasonable value of those services;
5. Awarding plaintiff its costs, disbursements, and attorney's fees as allowed by law; and
6. Affording plaintiff all other relief that is just and equitable under the circumstances.

ACKNOWLEDGEMENT: The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the party against whom the allegations in this pleading are asserted.

Dated: September 22, 2008



William S. Farrish
Attorney I.D. #84256
FARRISH JOHNSON LAW OFFICE
1907 Excel Drive
P.O. Box 550
Mankato, MN 56002-0550
Telephone: 507.387.3002
Fax: 507.625.4394

and

Richard H. Kakeldey
Attorney I.D. 53247
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ATTORNEYS FOR PLAINTIFF